

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 4:20-CR-115-FL-1

PATRICK J. FEDAK,

Defendant.

ARRAIGNMENT
OCTOBER 13, 2021
THE HONORABLE ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

On Behalf of the Government

JOHN P. NEWBY
United States Attorney's Office - EDNC
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

On Behalf of the Defendant

GUY DIXON SMITH
Greene, Wilson, Crow
401 Middle Street
New Bern, North Carolina 28563

Risa Kramer, RMR, CRR
Official Court Reporter
United States District Court
Wilmington, North Carolina

1 TRANSCRIPT OF PROCEEDINGS

2 (Proceedings commenced at 1:41 p.m.)

3 THE COURT: Good afternoon, ladies and
4 gentlemen. I am United States Magistrate Judge Robert
5 Jones, and we are here today in the United States
6 District Court for the Eastern District of North Carolina
7 at New Bern for arraignments in felony criminal cases.
8 I'd like to call the calendar. If counsel would advise
9 of the status of each case that's called as well as the
10 anticipated plea in each case that's going forward this
11 afternoon.

12 First case is Patrick Fedak, 4:20-cr-115.

13 MR. SMITH: Good afternoon, Your Honor. Guy
14 Smith on behalf of Mr. Fedak. That will be a not guilty
15 plea.

16 (Other cases were called by the Court.)

17 THE COURT: Mr. Newby, are you here for the
18 United States in each of these cases?

19 MR. NEWBY: Yes, sir, Your Honor. Good
20 afternoon.

21 THE COURT: Good afternoon. Are there any
22 victims in these cases?

23 MR. NEWBY: No, sir, Your Honor.

24 THE COURT: Okay.

25 MR. NEWBY: Well, not present. There would

1 be...

2 THE COURT: I should say are there any and,
3 if so, have they been notified, and if so, do any wish to
4 be heard this afternoon?

5 MR. NEWBY: None that wish to be heard, Your
6 Honor.

7 THE COURT: All right. Thank you.

8 All right. I'd like to ask each of the
9 defendants appearing before the Court this afternoon to
10 listen carefully to the following information. This
11 information will be an important part of your case. You
12 may be called upon this afternoon to make decisions in
13 your cases based on the following.

14 You are here because a bill of indictment has
15 been returned against you by the grand jury charging you
16 with the violation of one or more federal criminal laws.
17 You have certain rights as relate to these charges, and
18 I'm going to explain those rights to you.

19 As explained to you at your initial
20 appearance, you have the right to remain silent, you have
21 the right to be represented by an attorney and, if
22 necessary, to have the Court appoint an attorney to
23 represent you in your case, including at a trial. You
24 have the right to a trial by jury, and at such a trial,
25 you are presumed to be innocent. You do not have to

1 prove anything. Instead, the burden is upon the
2 government through its attorneys and agents to prove you
3 guilty by competent evidence and beyond a reasonable
4 doubt.

5 The method for the government to do this is
6 to call its witnesses who would testify under oath in
7 front of you, in front of a jury, and in front of the
8 presiding district judge. You, through your lawyer, will
9 then have the right to cross-examine those witnesses and
10 to object to any evidence you deem to be legally
11 improper.

12 You would also have the right to use the
13 subpoena power of this Court to bring to court witnesses
14 who may be favorable to you and to have these witnesses
15 testify under oath. You also may elect to take the
16 witness stand and testify under oath, but only if you
17 wish to do so. No one can force you to take the witness
18 stand and testify if you do not want to. If you choose
19 not to testify, the fact that you do not testify cannot
20 be held against you, and the district judge will instruct
21 the jury accordingly.

22 If you plead guilty to an offense this
23 afternoon, you will waive your right to a trial by jury
24 and the rights that I've just mentioned other than your
25 right to an attorney. You also will have to waive your

1 right not to incriminate yourself because I cannot accept
2 your plea of guilty as to a particular offense or
3 offenses unless you admit in open court your guilt as to
4 that particular offense or offenses.

5 By pleading guilty to a felony offense or
6 being convicted by a jury and adjudicated guilty of the
7 felony offense, you may lose certain valuable civil
8 rights such as the right to possess any kind of firearm,
9 the right to serve on a jury, the right to hold public
10 office, and the right to vote.

11 If you plead guilty or are found guilty at
12 trial, you may be ordered to make restitution in money or
13 services to the victims of your crime if they are
14 identifiable. In certain cases, you may be required to
15 forfeit property to the United States government.

16 If your offense involves fraud, you may be
17 required to provide notice of your conviction to the
18 victims of your crime. In addition, if you are not a
19 United States citizen, if convicted, you may be removed
20 from the United States, denied citizenship, and denied
21 admission to the United States in the future.

22 As required by the law, a special assessment
23 or monetary amount of \$100 for each felony offense or
24 count to which you plead guilty or are found guilty at
25 trial will be imposed against you. This special

1 assessment of \$100 per count will be in addition to and
2 on top of any fine that may also be imposed.

3 You may be given a term of supervised release
4 following any actual term of incarceration that is
5 imposed. Supervised release is similar to what you may
6 know as probation. The term of supervised release in
7 each individual case can range anywhere from one year up
8 to life based upon your individual criminal history and
9 the offense.

10 Supervised release would require you to
11 report to your assigned probation officer from time to
12 time and to comply with any court-imposed or directed
13 instructions. If you violate supervised release
14 conditions, you may be required to serve an additional
15 time of incarceration.

16 The United States Sentencing Commission has
17 established advisory guideline ranges for all federal
18 crimes. Although the district judge is no longer
19 required to specifically follow the guidelines in
20 sentencing you, he or she is required to calculate the
21 advisory guideline for your offense or offenses. The
22 district judge will then consider that guideline range as
23 well as other relevant factors that are set forth in
24 Title 18 of United States Code Section 3553(a) before
25 imposing a sentence. The district judge has the

1 authority in some circumstances to depart upward or
2 downward from that advisory guideline range and will also
3 examine other statutory sentencing factors under 18 U.S.
4 Code Section 3553(a) that may result in a sentence that
5 is either greater or lesser than the advisory guideline
6 sentence.

7 If the district judge imposes a sentence
8 outside the guideline range, he or she is required to
9 explain on the record at the time of sentencing his or
10 her reasons for imposing a sentence outside the
11 guidelines.

12 Under some circumstances, you may have the
13 right to appeal your sentence even though you pled guilty
14 to the underlying crime. However, if you have waived the
15 right to appeal your sentence in a plea agreement with
16 the United States, that agreement may be binding upon
17 you.

18 You should understand that parole has been
19 abolished in the United States court system, so if you
20 receive a sentence which includes an active term of
21 incarceration, you will not be released on parole.

22 Regarding plea agreements, you should know
23 that the Court is not a party to a plea agreement and
24 does not participate in the plea agreement negotiations.
25 However, the Court is obligated to examine carefully any

1 plea agreement with the government to ensure that it
2 conforms to the objectives of sentencing.

3 Rule 11 of the Federal Rules of Criminal
4 Procedure applies to the Court's consideration of plea
5 agreements and provides as follows: In one type of a
6 plea agreement, you or the government may request or
7 recommend to the Court that a particular sentence or
8 sentencing range is appropriate, or that a particular
9 provision of the sentencing guidelines does or does not
10 apply. Even if the Court accepts this type of a plea
11 agreement, the Court is not required to accept the
12 sentencing recommendation or request, and you do not have
13 the right to withdraw your guilty plea if the Court does
14 not follow the sentencing recommendation or request.

15 On the other hand, there may be plea
16 agreements in which the government agrees not to bring or
17 will move to dismiss other charges on which you and the
18 government agree to a specific sentence, sentencing
19 range, or to the applicability of a particular provision
20 of the sentencing guidelines.

21 If the Court accepts this type of a plea
22 agreement, then those terms that the parties have agreed
23 upon are binding on the Court, and that agreed-upon
24 disposition will be included in the judgment unless
25 otherwise directed by the plea agreement. However, if

1 the Court does not accept this type of a plea agreement,
2 the defendant will have the opportunity to withdraw his
3 or her plea. If the defendant does not withdraw the
4 plea, however, the Court is not required to follow the
5 plea agreement and may dispose of the case less favorably
6 toward the defendant than the plea agreement had
7 provided.

8 A written presentence report will be prepared
9 by the probation office to assist the district judge in
10 sentencing. You will be asked to give information for
11 this report, and you are entitled to have your attorney
12 present during the interview. It is important that the
13 presentence report be accurate because it will likely
14 determine your punishment range. After that report has
15 been prepared, you and your attorney will have an
16 opportunity to review the report and to object to any
17 aspects of the report you believe are inaccurate. Any
18 objections to the presentence report must be made in
19 writing and on a timely basis. If you do not contest the
20 facts that are set forth in the presentence report and
21 the Court's independent findings coincide with those
22 facts, those facts will be accepted by the Court as
23 correct, and the Court will rely upon them to determine
24 the guidelines applicable to your case.

25 If a party seeks to argue for a sentence

1 which varies from the sentencing guidelines, that party
2 shall file a written briefing in support of that position
3 and serve a courtesy copy on the probation officer who
4 drafted the presentence report.

5 At the time of sentencing, you and your
6 attorney will have the chance to speak to the Court and
7 to argue for a sentence that you and your attorney feel
8 is appropriate under 18 U.S. Code Section 3553(a). While
9 Judge Flanagan does not allow oral testimony in the
10 nature of character evidence at the sentencing hearing,
11 she will be happy to receive from your attorney written
12 sentencing briefing or character letters, all of which
13 should be provided to the Court at least one week before
14 the day you are scheduled to be sentenced.

15 Finally, if there are any victims of the
16 offenses for which you are to be sentenced, these victims
17 will be given the chance to be heard at the sentencing
18 hearing.

19 That concludes the explanation of your
20 rights. Those cases in which a plea of guilty is entered
21 today will be scheduled for a sentencing hearing to be
22 held no sooner than 90 days from today before Judge
23 Flanagan. It is anticipated that those cases will be set
24 for her January or February term. Any case in which a
25 plea of not guilty is entered today will have an

1 administrative conference call before Judge Flanagan.
2 Counsel will be contacted by the Court to arrange the
3 date and the time of that call as well as to provide
4 counsel with the dial-in instructions to participate in
5 that administrative conference call.

6 All right. Each defendant appearing this
7 afternoon should know that as I take up your case to hear
8 your plea and to address you personally, that you will be
9 placed under oath, and if you should answer any of my
10 questions falsely, that your answers may later be used
11 against you in another prosecution for perjury or making
12 a false statement.

13 All right. So let's see here. Sir, what is
14 your name?

15 (The foregoing concluded at 1:55 p.m. Other
16 cases were heard by the Court.)

17 (The following commenced at 2:41 p.m. The
18 defendant was placed under oath.)

19 THE COURT: Is it Fedak? Is that how you
20 pronounce your last name?

21 THE DEFENDANT: Fedak, sir.

22 THE COURT: Fedak? Mr. Fedak, sir, I have
23 here in my hands a document in your case entitled
24 "Consent to Proceed Before a Magistrate Judge." It looks
25 like that you have signed this form and that Mr. Smith

1 has also signed it. Did you, in fact, sign this form,
2 sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And is it your knowing and
5 voluntary desire that for the purpose of conducting your
6 arraignment in this case and taking your plea this
7 afternoon, that I may conduct these proceedings as a
8 United States Magistrate Judge?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Thank you. Please have a seat.

11 Now, Mr. Fedak, sir, do you understand that
12 you are now under oath, if you should answer any of my
13 questions falsely, that your answers may later be used
14 against you in another prosecution for perjury or making
15 a false statement?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What is your full name?

18 THE DEFENDANT: Patrick James Fedak.

19 THE COURT: And how old are you?

20 THE DEFENDANT: 38 years old.

21 THE COURT: How far have you gone in school?

22 THE DEFENDANT: Bachelor's degree.

23 THE COURT: Are you able to speak and
24 understand English?

25 THE DEFENDANT: Yes.

1 THE COURT: Are you able to read?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you currently or have you
4 recently been under the care of a physician or a
5 psychiatrist or been hospitalized or treated for
6 narcotics addiction?

7 THE DEFENDANT: No.

8 THE COURT: Have you taken any drugs, any
9 medicine, any pills, or had any alcoholic beverages in
10 the past 24 hours?

11 THE DEFENDANT: Yes.

12 THE COURT: Could you tell me what those are?

13 THE DEFENDANT: Duloxetine and ner- -- some
14 other one; starts with an "N."

15 THE COURT: Okay. Why do you take the
16 duloxetine?

17 THE DEFENDANT: So duloxetine is for nerve
18 pain.

19 THE COURT: Okay. And how often do you take
20 that?

21 THE DEFENDANT: Twice daily, sir.

22 THE COURT: And you've taken that today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And the other medication, what's
25 that for?

1 THE DEFENDANT: It's for PTSD, TBI.

2 THE COURT: Okay. And how often do you take
3 that?

4 THE DEFENDANT: Twice daily.

5 THE COURT: Have you taken that as well?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Any other medication,
8 pills, or drugs?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. So let me ask you this:
11 Those medications that you're taking, or the conditions
12 for which you're taking them, do either of those affect
13 your ability to understand the proceedings here this
14 afternoon?

15 THE DEFENDANT: They do not, sir.

16 THE COURT: All right. Mr. Fedak, sir, have
17 you been provided with a copy of the two charges filed
18 against you in this case?

19 THE DEFENDANT: I have, sir.

20 THE COURT: And have you fully discussed
21 those charges as well as your case in general with your
22 attorney?

23 THE DEFENDANT: I have, sir.

24 THE COURT: And do you understand the charges
25 against you?

1 THE DEFENDANT: I do.

2 THE COURT: Do you understand what is
3 happening this afternoon?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Mr. Smith, have you had
6 any difficulty in communicating with Mr. Fedak or any
7 reason to doubt his mental competency in this case?

8 MR. SMITH: No, Your Honor.

9 THE COURT: Does the United States have any
10 reason to doubt Mr. Fedak's mental competency in this
11 case?

12 MR. NEWBY: No, sir, Your Honor.

13 THE COURT: Very good. The Court finds that
14 Mr. Fedak is competent to appear, to understand the
15 nature of these proceedings, and to ultimately plead in
16 these matters.

17 Mr. Fedak, sir, have you had the time to and
18 have you, in fact, discussed your case with your
19 attorney?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And are you satisfied with
22 Mr. Smith's advice and counsel to you in this matter?

23 THE DEFENDANT: I am.

24 THE COURT: Did you hear and understand my
25 explanation of your rights this afternoon?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you understand my general
3 explanation of how you might be sentenced in this case?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you did receive a copy of the
6 indictment charging you with two counts, is that correct?

7 THE DEFENDANT: I have, sir.

8 THE COURT: And you understand what you're
9 charged with in each of those counts?

10 THE DEFENDANT: I do, sir.

11 THE COURT: Okay. Do you want me to read
12 those counts to you out loud or do you waive the reading
13 of them?

14 THE DEFENDANT: I will waive the reading,
15 sir.

16 THE COURT: All right. I am required to
17 remind you of the maximum possible penalty, not the
18 guidelines but the maximum possible penalty for each
19 count that you face, including any mandatory minimum
20 penalty. Could the government please remind Mr. Fedak as
21 to that information.

22 MR. NEWBY: Yes, sir, Your Honor.

23 As to count 1, theft or possession of U.S.
24 property, not more than ten years imprisonment, a fine
25 not to exceed \$250,000, or both such fine and

1 imprisonment; not more than three years supervised
2 release; not more than two years imprisonment upon
3 revocation of supervised release; a 100-dollar special
4 assessment; and restitution.

5 In count 2, possession of a stolen firearm,
6 not more than ten years imprisonment, fine not to exceed
7 \$250,000, or both such fine and imprisonment; not more
8 than three years supervised release; not more than two
9 years imprisonment upon revocation of supervised release;
10 a 100-dollar special assessment; and restitution.

11 THE COURT: Mr. Fedak, sir, do you understand
12 the two charges filed against you in this case as well as
13 the maximum punishment you face if found to be guilty as
14 to those two charges?

15 THE DEFENDANT: I do, sir.

16 THE COURT: Mr. Smith, did the prosecutor
17 make any formal plea offers in this case?

18 MR. SMITH: They have, Your Honor.

19 THE COURT: And those were rejected, is that
20 right?

21 MR. SMITH: They were, Your Honor.

22 THE COURT: And it's Mr. Fedak's intention to
23 plead not guilty to each of these charges? Is that
24 correct?

25 MR. SMITH: That is correct, Your Honor.

1 THE COURT: Is that what you wish to do,
2 Mr. Fedak?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Let me ask you some
5 questions before I take up your plea.

6 Sometimes, Mr. Fedak, defendants reject plea
7 agreements based on their attorney's estimate of the
8 sentence they would receive if convicted at a trial. Do
9 you understand that regardless of what your attorney may
10 have told you, by pleading not guilty, you are exposing
11 yourself to the potential that if convicted, you will be
12 sentenced to the maximum sentence allowed by the law? Do
13 you understand that?

14 THE DEFENDANT: I do, sir.

15 THE COURT: All right. So, given the
16 potential for you to be sentenced to the maximum sentence
17 allowed by the law if convicted at trial, would you like
18 to take additional time to engage in plea negotiations
19 with the United States or to consider what you wish to do
20 in this case?

21 THE DEFENDANT: I do not, sir.

22 THE COURT: Okay. You wish to enter your
23 plea this afternoon, is that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. All right. Mr. Fedak, as

1 to count 1, how do you plead to count 1?

2 THE DEFENDANT: Not guilty.

3 THE COURT: All right. Mr. Fedak, as to
4 count 2, how do you plead to count 2?

5 THE DEFENDANT: Not guilty.

6 THE COURT: All right. Mr. Fedak, your pleas
7 of not guilty are received by the Court.

8 Counsel will be contacted by the Court in the
9 very near future to arrange the date and the time of an
10 administrative conference call and to provide counsel
11 with the dial-in instructions to participate in that
12 conference call with the district court.

13 Anything further regarding Mr. Fedak's case?

14 MR. SMITH: No, Your Honor.

15 MR. NEWBY: No, sir, Your Honor.

16 THE COURT: All right. Thank you very much.

17 (Proceedings concluded at 2:48 p.m.)

18

19 **C E R T I F I C A T E**

20

21 I certify that the foregoing is a correct
22 transcript from the record of proceedings in the
23 above-entitled matter.

24 /s/Risa A. Kramer

3/21/2023

25 Risa A. Kramer, RMR, CRR

Date